

Koch, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKMILBANK 1551 NICHOLAS, LLC and
MILBANK 272 SHERMAN, LLC,

Plaintiffs,

-against-

1551 ST. NICHOLAS, LLC, 272 SHERMAN, LLC,
and FIRST AMERICAN TITLE INSURANCE
COMPANY OF NEW YORK, as Escrow Agent,

Defendants.

Case No.: 07-civ-9834 (JGK)(MHD)

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**STIPULATION AND ORDER DISMISSING CLAIMS AGAINST DEFENDANT FIRST
AMERICAN TITLE INSURANCE COMPANY OF NEW YORK, AS ESCROW AGENT,
TOLLING TIME TO ASSERT FUTURE CLAIMS AGAINST SAID DEFENDANT AND
WAIVING DEFENDANTS' RIGHT TO SEEK DISMISSAL OF ACTION
ON BASIS OF FAILURE TO JOIN AN INDISPENSABLE PARTY**

WHEREAS, on or about November 6, 2007, plaintiffs Milbank 1551 Nicholas, LLC and Milbank 272 Sherman, LLC (collectively, the "Purchasers") commenced the above-captioned action (the "Action") against defendants 1551 St. Nicholas, LLC, 272 Sherman, LLC (collectively, the "Sellers") and First American Title Insurance Company of New York, as Escrow Agent (the "Escrow Agent" and, collectively, with the Sellers, "Defendants").

WHEREAS, the relief requested in Purchasers' complaint (the "Complaint") includes, *inter alia*, a declaratory judgment requiring that the Escrow Agent immediately return two escrow deposits in the amount of \$900,000 and \$720,000 (the "Escrow Deposits"), which were made by Purchasers, and are being held by the Escrow Agent, in connection with the transactions at issue;

WHEREAS, Sellers intended to assert a counterclaim/cross-claim for, *inter alia*, a declaratory judgment requiring the Escrow Agent to turn over the Escrow Deposits to Sellers;

WHEREAS, the Escrow Agent has requested that the parties stipulate to the dismissal of the claims alleged against the Escrow Agent in the Complaint on terms requiring that the Escrow Agent continue to hold the Escrow Deposits in escrow and abide by the Court's decision regarding the disposition of the funds;

WHEREAS, all parties agree to dismiss the claims alleged against the Escrow Agent, without prejudice and subject to the terms below.

NOW, THEREFORE, the parties have stipulated and agreed as follows:


1. Purchasers agree to dismiss any and all claims alleged in the Complaint as and against Escrow Agent, without prejudice;
2. Any statute of limitations which may apply with respect to Purchasers' or Sellers' claims against the Escrow Agent with respect to the Escrow Deposits, whether previously asserted in the Complaint or otherwise, shall be tolled indefinitely.
3. Sellers agree not to seek dismissal of this action based upon failure to join the Escrow Agent as an indispensable party.
4. Escrow Agent agrees to continue to hold the Escrow Deposits in escrow and abide by the Court's decision regarding the disposition of these funds.

IT IS FURTHER STIPULATED AND AGREED, that this stipulation may be executed by counterpart originals, electronic copies or facsimiles, and each such counterpart shall be

deemed an original instrument, but all such counterparts together shall constitute one agreement.

Dated: New York, New York
December 18, 2007

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Dated: New York, New York
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Dated: New York, New York
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Nicholas, LLC and 272 Sherman, LLC*

Dated: December __, 2007

SO ORDERED:

Hon. John G. Koeltl
Hon. John G. Koeltl, U.S.D.J.

1/3/08